

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS MANWELL DAWSON,
Plaintiff,
v.
JEFF LYNCH, et al.,
Defendants.

No. 2:21-cv-0510 KJM AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff was given an opportunity to file an amended complaint after the original complaint was screened and found to not state any claims for relief. ECF No. 22. After receiving several extensions of time, plaintiff has filed a first amended complaint. ECF No. 39.

I. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against “a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[] monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th

1 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal
 2 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,
 3 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
 4 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
 5 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
 6 Franklin, 745 F.2d at 1227-28 (citations omitted).

7 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
 8 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
 9 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
 10 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 11 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
 12 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,
 13 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
 14 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a
 15 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the
 16 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain
 17 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
 18 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur
 19 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

20 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
 21 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
 22 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
 23 content that allows the court to draw the reasonable inference that the defendant is liable for the
 24 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
 25 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
 26 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
 27 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
 28 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

1 II. First Amended Complaint

2 The first amended complaint alleges that defendants Lynch, Bobbala, Soltanian-Zadeh,
3 Ma, Uddin, Rattan, Roth, and Ybarra violated plaintiff's rights under the First and Eighth
4 Amendment. ECF No. 39.

5 Plaintiff alleges that July 21, 2017, Soltanian-Zadeh told plaintiff that he did not deserve
6 his cane because he had filed an appeal. Id. at 6. Soltanian-Zadeh then took plaintiff's cane and
7 discontinued all of his disability verifications and chronos, all of which appear related to
8 plaintiff's mobility. Id. at 6-7. Ten days later, plaintiff went on a hunger strike and was
9 interviewed regarding the hunger strike by Bobbala, at which time she told him that she would
10 reinstate his disability verifications if he stopped his hunger strike. Id. at 5-6. Plaintiff stated that
11 he would only stop the hunger strike once everything was reinstated, but Bobbala refused to
12 reinstate the verifications until plaintiff stopped his hunger strike. Id. at 6. Later, another doctor
13 manipulated plaintiff into discontinuing his hunger strike by promising, among other things, to
14 reinstate plaintiff's disability accommodations, but instead failed to record the agreement and
15 updated plaintiff's medical records to say that he did not have sarcoidosis disease. Id. When
16 plaintiff told Bobbala about the agreement, she told him there was nothing she could do because
17 he does not have sarcoidosis disease. Id.

18 In May 2019, plaintiff experienced an extreme bout of pain that caused him to fall to the
19 floor and urinate and defecate on himself which he believes was caused by his azathioprine (an
20 immunosuppressant). Id. at 8. He reported this experience to Ma and also reported an injury to
21 his elbow. Id. at 8-9. Ma ordered an elbow x-ray and recorded that plaintiff reported elbow pain
22 and had decreased range of motion, but that plaintiff denied injury, numbness, or weakness. Id. at
23 9. Plaintiff appears to allege that the notation that the denied injury, numbness, or weakness is
24 untrue. Id. Ma then asked plaintiff why he had medical single-cell status when he did not fit the
25 criteria. Id. Plaintiff told Ma that he did fit the criteria because of his chronic sarcoidosis disease
26 with pulmonary sarcoid lung disease and white blood cell disorder. Id. When Ma saw plaintiff
27 for a follow-up to some testing, Ma told plaintiff he had osteopenia but did not explain what that
28 was or where plaintiff had it. Id. at 10. Ma also told plaintiff he had a mild heart condition but

1 did not specify that plaintiff had seven different heart conditions. Id. When Ma once again asked
2 plaintiff about his medical single-cell status, plaintiff began to believe that Ma had “done
3 something” to his azathioprine so that he could discontinue plaintiff’s single-cell status once he
4 stopped taking the medication. Id. Ma ultimately discontinued plaintiff’s medical-single cell
5 status, stating that he did not meet the criteria. Id. at 9-10. Plaintiff submitted multiple health
6 care grievances, presumably about Ma’s treatment, that were denied by Bobbala. Id. at 9.

7 With respect to the other defendants, plaintiff alleges that Lynch is the warden of the
8 prison and is therefore responsible “for the daily operational function and adherence to the policy
9 and procedures,” including medical and condones the denial of medical care. Id. at 5. Uddin and
10 Rattan are both doctors who allegedly falsified plaintiff’s medical records and denied him
11 “adequate medical care and treatment and attempt of murder on [his] life.” Id. at 11. Roth and
12 Ybarra are correctional staff who allegedly denied him medical single-cell status and a medical
13 transfer to a medical prison. Id.

14 III. Claims for Which a Response Will Be Required

15 A. Deliberate Indifference

16 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
17 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,
18 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff
19 to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition
20 could result in further significant injury or the unnecessary and wanton infliction of pain,’” and
21 (2) “the defendant’s response to the need was deliberately indifferent.” Id. (some internal
22 quotation marks omitted) (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)).
23 Deliberate indifference is established only where the defendant subjectively “knows of and
24 disregards an excessive risk to inmate health and safety.” Toguchi v. Chung, 391 F.3d 1051,
25 1057 (9th Cir. 2004) (citation and internal quotation marks omitted).

26 Plaintiff has sufficiently alleged that defendant Soltanian-Zadeh and Bobbala were
27 deliberately indifferent to his serious medical needs when Soltanian-Zadeh discontinued
28 plaintiff’s disability verifications and chronos for non-medical reasons and when Bobbala

1 refused to reinstate them unless plaintiff stopped his hunger strike. These defendants will be
2 required to respond to the complaint.

3 B. Retaliation

4 Plaintiff has also sufficiently alleged that Soltanian-Zadeh's discontinuation of his
5 disability verifications and chronos was retaliatory, see Rhodes v. Robinson, 408 F.3d 559, 567-
6 68 (9th Cir. 2005) (retaliation claim must include allegation that defendant took adverse action
7 against plaintiff because of his protected conduct and that the action chilled plaintiff's exercise of
8 First Amendment rights and lacked legitimate correctional goal), and Soltanian-Zadeh will be
9 required to respond to this claim.

10 IV. Failure to State a Claim

11 A. Defendant Ma

12 A difference of opinion between inmate and prison medical personnel—or between
13 medical professionals—regarding the appropriate course of treatment does not by itself amount to
14 deliberate indifference to serious medical needs. Toguchi, 391 F.3d at 1058; Sanchez v. Vild,
15 891 F.2d 240, 242 (9th Cir. 1989). To establish that a difference of opinion rises to the level of
16 deliberate indifference, plaintiff “must show that the course of treatment the doctors chose was
17 medically unacceptable under the circumstances.” Jackson v. McIntosh, 90 F.3d 330, 332 (9th
18 Cir. 1996) (citation omitted).

19 Plaintiff has alleged, at most, a difference of opinion as to whether he qualifies for
20 medical single-cell status. It is unclear from the allegations that plaintiff qualifies for a medical
21 order for single-cell status, and even if he does qualify for such status, the allegations reflect that
22 Ma does not believe plaintiff qualifies and plaintiff has failed to identify what excessive risk to
23 his health Ma ignored in cancelling his single-cell status. Plaintiff's claims regarding Ma's
24 treatment of his elbow and failure to advise plaintiff of his medical conditions to the degree of
25 specificity he believes appropriate also fail to state claims for relief. The allegations show that
26 Ma examined plaintiff's elbow and ordered an x-ray, and plaintiff fails to establish that Ma's
27 failure to inform him of the specifics of his conditions was inappropriate or created an excessive
28 risk to plaintiff's health. Finally, the claim that Ma did something to plaintiff's medication also

1 fails to state a claim for relief because it is based on pure speculation.

2 B. Grievances

3 With respect to plaintiff's claims that Bobbala denied his grievances, prison
4 administrators cannot willfully turn a blind eye to constitutional violations being committed by
5 subordinates. See Jett, 439 F.3d at 1098 (prison administrators "are liable for deliberate
6 indifference when they knowingly fail to respond to an inmate's requests for help" (citations
7 omitted)). Therefore, an individual who denies an inmate appeal and who had the authority and
8 opportunity to prevent an ongoing constitutional violation could potentially be subject to liability
9 if the individual knew about an existing or impending violation and failed to prevent it. See id.
10 However, plaintiff's allegations fail to state a claim for relief because they do not show that his
11 grievances contained information that would have put Bobbala on notice of an ongoing
12 constitutional violation such that she could have intervened.

13 C. Personal Involvement

14 "Liability under § 1983 must be based on the personal involvement of the defendant,"
15 Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998) (citing May v. Enomoto, 633 F.2d
16 164, 167 (9th Cir. 1980)), and "[v]ague and conclusory allegations of official participation in civil
17 rights violations are not sufficient," Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)
18 (citations omitted). Because plaintiff makes only conclusory allegations that defendants Uddin,
19 Rattan, Roth, and Ybarra violated his rights, he fails to state a claim for relief against them. It is
20 further unclear how Roth and Ybarra, as correctional staff, would have had the authority to make
21 decisions regarding plaintiff's medical status.

22 With respect to Lynch, "[t]here is no respondeat superior liability under section 1983,"
23 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted), and plaintiff has not
24 alleged facts showing either Lynch's personal involvement in the alleged violations or a causal
25 connection between Lynch's conduct and the violation, see Starr v. Baca, 652 F.3d 1202, 1207
26 (9th Cir. 2011) (quoting Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)). It appears that
27 Lynch has been named as a defendant based solely on his position as warden, which is
28 insufficient to state a claim for relief.

V. Leave to Amend

For the reasons set forth above, the court finds that the complaint does not state a claim against Bobbala for denying his grievance or any cognizable claims against Ma, Lynch, Uddin, Rattan, Roth, and Ybarra. However, it appears that plaintiff may be able to allege facts to remedy this and he will be given one final opportunity to amend the complaint if he desires.

Plaintiff may proceed forthwith to serve defendants Soltanian-Zadeh and Bobbala on his claims that they were deliberately indifferent to his serious medical needs and that Soltanian-Zadeh retaliated against him or he may delay serving any defendant and amend the complaint.

Plaintiff will be required to complete and return the attached notice advising the court how he wishes to proceed. If plaintiff chooses to amend the complaint, he will be given thirty days to file an amended complaint. If plaintiff elects to proceed on his cognizable claims against defendants Soltanian-Zadeh and Bobbala without amending the complaint, the court will proceed to serve the complaint. A decision to go forward without amending the complaint will be considered a voluntarily dismissal without prejudice of his claim against Bobbala for denying his grievance and all claims against Ma, Lynch, Uddin, Rattan, Roth, and Ybarra.

If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

Plaintiff is also informed that the court cannot refer to a prior pleading in order to make his amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.

1 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
2 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
3 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
4 any prior complaints no longer serve any function in the case. Therefore, in an amended
5 complaint, as in an original complaint, each claim and the involvement of each defendant must be
6 sufficiently alleged.

7 VI. Plain Language Summary of this Order for a Pro Se Litigant

8 Some of the allegations in the complaint state claims against the defendants and some do
9 not. You have stated a claim for deliberate indifference against defendants Soltanian-Zadeh and
10 Bobbala based on the revocation and failure to reinstate your disability verifications and chronos
11 and against Soltanian-Zadeh for retaliation. You have not stated a claim against Bobbala based
12 on the denial of your grievances because you have not shown that she was aware of an ongoing
13 violation and failed to intervene. You also have not stated any claims against Ma, Lynch, Uddin,
14 Rattan, Roth, and Ybarra because you have not alleged any specific facts about what they did that
15 you believe violated your rights.

16 You have a choice to make. You may *either* (1) proceed immediately on your claims for
17 deliberate indifference against defendants Soltanian-Zadeh and Bobbala based on the revocation
18 and failure to reinstate your disability verifications and chronos and for retaliation against
19 Soltanian-Zadeh, and voluntarily dismiss the other claims, *or* (2) try to amend the complaint. If
20 you want to go forward without amending the complaint, you will be voluntarily dismissing
21 without prejudice your claim against Bobbala based on the denial of your grievances and all
22 claims against Ma, Lynch, Uddin, Rattan, Roth, and Ybarra. If you choose to file a second
23 amended complaint, it must include all claims you want to bring. Once an amended complaint is
24 filed, the court will not look at any information in the original complaint. **Any claims and**
25 **information not in the second amended complaint will not be considered.** You must
26 complete the attached notification showing what you want to do and return it to the court. Once
27 the court receives the notice, it will issue an order telling you what you need to do next (i.e., file
28 an amended complaint or wait for defendants to be served).

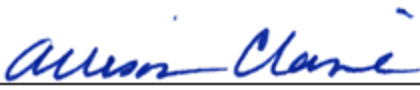
1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's allegation that Bobbala denied his grievances and his allegations against
3 Ma, Lynch, Uddin, Rattan, Roth, and Ybarra do not state claims for which relief can be granted.

4 2. Plaintiff has the option to proceed immediately on his claims for deliberate
5 indifference against defendants Soltanian-Zadeh and Bobbala based on the revocation and failure
6 to reinstate his disability verifications and chronos and for retaliation against Soltanian-Zadeh as
7 set forth in Section III above, or to amend the complaint.

8 3. Within fourteen days of service of this order, plaintiff shall complete and return the
9 attached form notifying the court whether he wants to proceed on the screened complaint or
10 whether he wants to file a second amended complaint. If plaintiff does not return the form, the
11 court will assume that he is choosing to proceed on the complaint as screened and will
12 recommend dismissal without prejudice of the claims against Bobbala for denying his grievances
13 and all claims against Ma, Lynch, Uddin, Rattan, Roth, and Ybarra.

14 DATED: October 16, 2023

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16 ALLISON CLAIRE
17 UNITED STATES MAGISTRATE JUDGE
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FOR THE EASTERN DISTRICT OF CALIFORNIA

CARLOS MANWELL DAWSON,

Plaintiff,

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NOTICE OF ELECTION

Check one:

_____ Plaintiff wants to proceed immediately on his claims for deliberate indifference against defendants Soltanian-Zadeh and Bobbala based on the revocation and failure to reinstate his disability verifications and chronos and for retaliation against Soltanian-Zadeh without amending the complaint. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing without prejudice his claims against Bobbala for denying his grievances and all claims against Ma, Lynch, Uddin, Rattan, Roth, and Ybarra pursuant to Federal Rule of Civil Procedure 41(a).

_____ Plaintiff wants to amend the complaint.

DATED: _____

Carlos Manwell Dawson
Plaintiff pro se